
Report of the Chief Officer PPPU and Procurement

Report to Scrutiny Board (Resources and Council Services)

Date: 29 September 2014

Subject: Effective Procurement and Contract Procedure Rules

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

Executive Board approved a refreshed procurement policy for the council at its meeting on 24 April 2013. The policy was developed as the Transforming Procurement Programme, and the approved documentation and approach is now called Effective Procurement.

Work to implement the new approach is underway through a 2-year transition period.

The main topics raised by elected members during consultation were: Value for Money; Socially Responsible Procurement; Open, Honest and Transparent Decision Making; and Consultation and Engagement.

Specific feedback was also sought from this Scrutiny Board (Resources and Council Services) in July 2013 on proposed revised Contract Procedure Rules, and members recommended some specific provisions relating to decision-making which were incorporated into the Rules.

This report updates members of Scrutiny Board (Resources and Council Services) on progress in implementing the new Contract Procedure Rules and the other Effective Procurement documentation, and on anticipated changes to legislation and guidance.

Recommendations

Members of Scrutiny Board (Resources and Council Services) are asked to note the contents of this report, and provide feedback on

- whether they are satisfied with the level of transparency in procurement decision-making following the changes in Contracts Procedure Rules
- the progress now reported on implementation in relation to the key themes identified in paragraph 3 of Value for Money; Socially Responsible Procurement; and Consultation and Engagement.

1 Purpose of this report

- 1.1 To provide an update on the operation of Contracts Procedure Rules and the implementation of the Effective Procurement documentation, and to highlight current national guidance and anticipated changes to legislation.

2 Background information

Contracts Procedure Rules

- 2.1 Contracts Procedure Rules set out the key responsibilities and actions that council staff must follow when undertaking procurements. They support staff to meet legislative requirements, and to meet the council's ambitions for procurement, the council's procurement policy, and related policies and procedures. Together with a range of linked templates and toolkits, they support staff to deliver effective procurement.

Procurement Activity

- 2.2 The council currently spends £800 million externally each year, across both revenue and capital. We use a variety of contracts, from simple purchase orders to long-term partnership agreements. Some contracts are with a single provider, others are frameworks with multiple providers.
- 2.3 The council procures a very wide range of goods, works and services, including front-line services and back-office support. Examples include foster care, home care, homelessness support, energy, vehicles, seeds, catering products, building works, highways repairs, and IT software.

Procurement Ambition

- 2.4 At the heart of the council's procurement policy sits our ambition to deliver the best commissioning, procurement and contracting in the country, where:
- We achieve value for money for the public
 - We support the delivery of quality outcomes for service users
 - We support the wider ambitions of the council and its partners
 - Providers of all sizes and from all sectors want to deliver for Leeds
 - Procurement professionals want to work for Leeds, and
 - We are recognised nationally as a centre of excellence.

3 Main issues

3.1 Overview

- 3.1.1 The new approach to Effective Procurement is designed to support the following.

3.2 Value for Money

- 3.2.1 The cornerstone of the council's procurement policy and ambition, and reflected throughout the proposed Contracts Procedure Rules, is securing value for money through category planning. Each procurement should have a procurement plan, contract management plan and exit plan. Each of these is designed to ensure that relevant value for money considerations are considered by officers (through options appraisals, combining procurements where appropriate, developing robust procurement documentation and monitoring contract performance). There are linked template documents and toolkits to help council staff to meet these requirements.

3.3 Socially Responsible Procurement

- 3.3.1 Throughout the development of the policy, and reflected in the revised Contracts Procedure Rules, feedback was received confirming that elected members wanted our procurements to reflect the council's wider ambitions, for example with respect to social value, jobs and skills, treatment of sub-contractors, and access for small and medium sized enterprises (SMEs) and third sector organisations. CPR 1.1.3 (Council Policies) and CPR 3.1.9 (Social, Environmental and Economic Impact) require council staff to take these matters into account when undertaking a procurement, and supporting toolkits are available to help them to do so.

3.4 Open, Honest and Transparent

- 3.4.1 A key issue raised particularly by external consultees, was a request for higher levels of openness and transparency in the council's procurement activities. The revised Contracts Procedure Rules require the publication of a register of contracts that have been awarded and a calendar of forthcoming procurements. They also require that results of tenders and feedback on their submissions will be available to tenderers. Tender and contract details are now available to view through YORtender or the council's open data site (see 3.6.10 and 3.6.11 below).

3.5 Decision Making

- 3.5.1 This Scrutiny Board recommended the following approach to decision-making in Contracts Procedure Rules, and these were incorporated into the new CPRs in October 2013.
- The Board welcomed the proposal that the main decision to approve the scope and budget of a procurement would be taken early in the process at the same time as the decision on whether or not to undertake a procurement exercise and the procurement route.
 - In relation to Framework agreements that the Key Decision was taken both at the time that the decision to procure via the framework agreement was taken and also at each subsequent call off.
 - That any decision to extend a contract be treated as a Key, Significant Operational or Administrative decision in accordance with Article 13 thresholds.

- That all waivers of Contracts Procedure Rules are treated, as a minimum, as a Significant Operational Decision.
- Members welcomed the development of a procurement calendar. Members reiterated the need to ensure that calendars programmed sufficient time for call-in and the possibility of reference back

3.5.2 Members are requested to confirm whether they are satisfied with the level of transparency in procurement decision-making following the changes in Contracts Procedure Rules

3.6 Implementation

3.6.3 The first version of the new Contracts Procedure Rules took effect from 1 October 2013 and they were subsequently updated on the 9th June 2014 (see 3.6.7 below). The strategy anticipated a 2 year implementation from April 2013 for category planning and use of the new documentation to be effectively embedded.

3.6.4 Procurement spend analysis continues to monitor on/off contract and non-contract spend. Details of spend, savings and performance against on/off and non-contract spend, and targets are reported on a quarterly basis to Executive Board, together with a summary of spend with local suppliers, third sector organisations and SMEs. The most recent update (Quarter 1) shows that recorded on-contract spend has increased from 40% (2012) to 80% (2014); savings achieved/forecast for 12/13 = £6.3m; 13/14 = £6.4m; 14/15 (est.) £8.3m. Most of these savings are built into Directorate budget plans.

3.6.5 Monitoring is undertaken on the numbers of procurements for which Employment and Skills plans are in place, and jobs/opportunities supported.

3.6.6 Toolkits are now available on InSite covering managing a procurement category, social responsibility in procurement, planning a procurement, delivering a procurement, evaluation in procurement, awarding a contract, communication and engagement in procurement, and managing a contract

3.6.7 Contracts Procedure Rules have been further updated (9 June 2014) to

- deal with some issues of clarity raised by colleagues in directorates and PPPU/PU staff including making clear that a single Procurement Plan, Contract Management Plan or Exit Plan can be used for a group of similar procurements/contracts
- align with the revised Constitution and changes in legislation (i.e. new thresholds for the application of the full EU procurement regime)
- to highlight the option of quality thresholds leading then to a price only competition

- 3.6.8 Category Plans have developed more effectively and quickly in some categories than others. Contracts Procedure Rules anticipate fully developed and approved Category Plans by March 2015. Consultation of lead / executive members in the development of category planning relating to their portfolio is undertaken by Directorate commissioners
- 3.6.9 Corporate Commissioning Group continues as the forum for officers sharing best practice across Directorates, and linking with the third sector.
- 3.6.10 The Council and regional electronic procurement system YORtender, has been developed and improved and this has enabled greater transparency on procurement activity, published on the Leeds Data Mill website on a monthly basis
- 3.6.11 This makes progress towards the new Government published Transparency Code, which took effect in May 2014, and further steps are in place to fully comply by March 2015. The new code requires publication of tenders and contracts awarded over a £5k threshold. The Council's Contracts Procedure Rules require Directorates to register all tenders/contracts awarded over a £10k threshold. The introduction of the new publication threshold is placing an additional resource burden on the council requiring the employment of 2.5FTE at an annual additional cost of £80k. The council has taken every opportunity to inform the government of the impact of these new proposals and has asked the government to consider what, if any, benefits will be gained.
- 3.6.12 The proportion of on-contract spend is increasing, however there is still a proportion of contract activity (including through finance feeder systems) which is not clear and/or not registered on YORtender in accordance with Contracts Procedure Rules, and is currently difficult to report accurately on. Work is in hand to seek to address these issues.
- 3.6.13 There are a number of developments that procurement are leading on in conjunction with financial management to develop the financial management system (FMS) to enable order raisers to find contacted suppliers and Internal service providers easier in an effort to reduce off contract spend.
- 3.6.14 New EU Rules (see next section) will require a refresh of some of the documentation

4 EU procurement Directive

- 4.1 Further changes to the council's procurement documents are likely to follow from a refreshed European Union Procurement Directive ("Directive") which was adopted by the EU on the 28th March 2014. The UK Government has two years to implement the Directive into UK law but has committed to fast tracking the implementation. The latest estimate of full implementation is between December 2014 and March 2015.
- 4.2 The fully drafted details are not yet available, although at a high level the key changes are:

- 4.2.1 Abolition of distinction between Part A and Part B Services – this change means that some contract types that generally did not in the past have to go out to competitive tender will in future need to. This includes health, care, leisure, cultural, legal, and education. However, a new ‘light touch’ regime will apply to health and care contracts with a higher threshold at which competition will be required.
- 4.2.2 New measures to support SMEs - such as a requirement to consider dividing contracts into lots, a cap on turnover requirements at no more than two times contract value except where there is a specific justification in order to be able to tender, and new provisions reducing bureaucracy in the PQQ process by introducing supplier self-declarations with only the winning bidder having to submit various certificates and documents to prove their status [*Members should note that the first two are already incorporated into the Council’s Effective Procurement documents*].
- 4.2.3 Preliminary market consultations between contracting authorities and suppliers are encouraged, which should facilitate better specifications, better outcomes and shorter procurement times [*Members should note that the Council’s Effective Procurement documents encourage market analysis and consultation*].
- 4.2.4 Contracting authorities will be able to reserve the award of certain services contracts to mutuals/social enterprises for a time-limited period but this will still require competition between organisations meeting the mutual or social enterprise criteria.
- 4.2.5 More freedom to negotiate. Constraints on using the competitive procedure with negotiation have been relaxed, so that the procedure will generally be available for any requirements that go beyond “off the shelf” purchasing
- 4.2.6 A new procedure, the “Innovation Partnership” procedure, has been introduced. This is intended to allow scope for more innovative ideas. The supplier bids to enter into a partnership with the authority, to develop a new product or service.
- 4.2.7 Improved rules on social and environmental aspects, making it clear that:
- social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed) [*Effective procurement documentation provides tools for considering social value outcomes in procurements*];
 - contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental benefits;
- 4.2.8 Clarity that full life-cycle costing can be taken into account when awarding contracts [*Effective procurement already encourages this*]
- 4.2.9 Greater emphasis on electronic procurement and a simplified regime for Dynamic Purchasing Systems [*Leeds procurement activity is almost fully electronic*]

4.3 The current guidance and awareness materials only make scant reference to the significant reforms suggested by Lord Young in 2013 to open up markets to SMEs, which the Government have committed to consider in the new regulations. A separate Bill, the Small Business Enterprise and Employment Bill will, if enacted, enable the Government to make regulations to mandate processes for procurement activity of contracting authorities, mainly aimed at under EU threshold contracts (such as abolition of pre-qualification questionnaires and use of the Government's Contracts Finder website), and create investigatory powers into procurement activity. The Government have indicated these reforms will be implemented by the end of the calendar year.

4.4 PPPU/PU staff have attended awareness sessions promoted by the Cabinet Office/Crown Commercial Service. The new provisions have been shared with colleagues on Corporate Commissioning Group, and the Unit has delivered cascade awareness sessions to category teams and key commissioning contacts in Directorates. Some refreshing of the Effective Procurement documentation will be required.

5 CLG committee report on local government procurement, and new National Procurement Strategy

5.5 A CLG Committee report on procurement was published in March 2014 and makes a number of findings and recommendations. The headline areas are collaboration, the need to deliver strategic objectives and social value outcomes in procurement, reduction in cost and bureaucracy, better contract management, and reducing the opportunity for fraud by 'not walking away' from contracts once let. There is again very clear emphasis on skills particularly commercial skills within procurement. The report acknowledges that the gains to be made from more collaborative procurements (estimated at £1.8bn) should not be at the expense of social value outcomes.

5.6 The Local Government Association has subsequently launched its new National Procurement Strategy. The strategy recommends that councils take action in four themes: making savings, supporting local economies, leadership and modernising procurement. The first encourages category management, and greater emphasis on partnering and collaboration, contract management and effective performance monitoring, the second recommends greater use of social value criteria in contracts and improved access for SMEs and the voluntary sector, the third recommends Councils have a single cohesive voice at Government level and strategic leadership in commissioning including a member procurement 'champion', and the fourth recommends a more commercial approach to procurement, and greater use of e-procurement. Effective Procurement already supports the majority of these themes.

5.7 Effective Procurement seeks and provides tools and workshop packs to support the themes and recommendations, as set out in this report. Further consideration will be given to the pre-qualification process once the direction of the new legislation becomes clear.

6 Corporate Considerations

6.1 Consultation and Engagement

- 6.1.1 The previous report to this Scrutiny Board detailed the extensive consultation and engagement undertaken under the Transforming Procurement Programme.
- 6.1.2 The draft updated Contracts Procedure Rules have been subject of consultation with procurement and commissioning officers within the Council. As the changes were of a clarificatory and technical nature, wider consultation was not required.
- 6.1.3 Engagement on commissioning and procurement issues and activity with the Third Sector continues through Corporate Commissioning Group, and the Third Sector Partnership

6.2 Equality and Diversity / Cohesion and Integration

- 6.2.4 The Transforming Procurement Programme included equality issues as one of its workstreams and has undertaken a formal screening, which was published alongside the 24 April 2013 Executive Board report. The screening highlighted the importance of screening categories and procurements for their equality impacts and responding accordingly in line with the council's equality and diversity policies. There have been no major changes at a policy level. Contracts Procedure Rules require consideration of equality matters when undertaking a procurement and the key template documents that Contracts Procedure Rules refer to provide specific prompts in this respect.

6.3 Council policies and City Priorities

- 6.3.5 Contracts Procedure Rules and the Effective Procurement documentation support the council value of 'spending money wisely', and seek to ensure that the council's other values are embedded in all of the council's procurement activities.

6.4 Resources and value for money

- 6.4.1 Contracts Procedure Rules support categories and procurements to secure best value for money. Contracts Procedure Rules and the Effective Procurement documentation support directorates to plan ahead and understand the required outcomes, risks and benefits, and the budget, 'market place', and cost drivers for their procurements. They also support directorates in contract management and contract exit.
- 6.4.2 The linked template documents and toolkits support consideration of value for money throughout the procurement lifecycle, including tools to track savings opportunities and to support resource allocation which is proportionate to the value, risk and complexity of the relevant issue or task. This also includes non-cashable savings, or cost avoidance, and securing savings and value for money improvements through appropriate contract management.

- 6.4.3 Paragraph 3.6.10 above provides more information on procurement savings targets.

6.5 Legal Implications, Access to Information and Call In

- 6.5.1 The Council is obliged to have Contracts Procedure Rules by Section 135 of the Local Government Act 1972 which must include provision for securing competition in the award of contracts and for regulating the manner in which tenders are invited.
- 6.5.2 Contracts Procedure Rules and the linked recommended templates and toolkits will continue to be reviewed, including the new EU Procurement Directive.

6.6 Risk Management

- 6.6.1 Contracts Procedure Rules support identification and management of the key risks in the council's procurement activities. The linked recommended templates and toolkits include prompts and tools to support consideration and active risk management of contract and procurement risks throughout the procurement lifecycle.
- 6.6.2 Monthly on/off contract report produced which is shared with category teams directorates and internal audit.

7 Conclusions

- 7.7 Work to implement the new approach continues through a 2-year transition period.
- 7.8 Spend and savings are monitored and reported to Executive Board, but work is still required to achieve full transparency, especially where spend is processed through feeder systems.
- 7.9 The Directive sets out procedures which must be followed before awarding a contract to suppliers of works, supplies or services when its value exceeds the thresholds set by the EU. Whilst this report summarises the main provisions of the Directive at section 4 above it does not set out all the proposed changes to the relevant rules. It is anticipated that some refreshing of the Effective Procurement documentation will be required following transposition of the Directive into UK legislation. .

8 Recommendations

- 8.1 Members of Scrutiny Board (Resources and Council Services) are asked to note the contents of this report and comment on.
- whether they are satisfied with the level of transparency in procurement decision-making following the changes in Contracts Procedure Rules
 - the progress now reported on implementation in relation to the key themes identified in paragraph 3 of Value for Money; Socially Responsible Procurement; and Consultation and Engagement

9 Background documents¹

9.1 None

10 Appendices

1. Summary of the council's Procurement Strategy
2. Summary of Contracts Procedure Rules

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Procurement Strategy

We will adopt a **category management approach**, where related purchasing is grouped together to take advantage of better intelligence of our buying needs and of what providers have to offer, and to support bulk buying where appropriate, in order to improve quality, savings and efficiency.

We will adopt a **whole lifecycle approach**, which starts from assessing needs and analysing options, through preparation and procurement, to mobilisation, contact management and exit, to ensure quality outcomes and value for money are achieved.

All categories will work to **common principles and rules**, but outputs will be **tailored to meet the needs** of the specific category, reflecting the service area, stakeholder needs and the market place, to ensure quality outcomes and value for money are achieved.

We will build on expertise within directorates and provide appropriate central **support and check and challenge**, ensuring lessons are learned and shared, in order to ensure continuous improvement in the council's procurement activities.

We will demonstrate clear **ownership and accountability** within our procurement activities, with structured governance, and assurance, to ensure clear, timely and auditable decision making.

We will be **open and transparent**, with a visible and accessible contracts register and procurement calendar, robust management information, and clear tender processes and documentation, to ensure a positive and professional relationship between the council and its procurement partners, and confidence in our approach from the people of Leeds.

We will consult and engage with **stakeholders** throughout the procurement lifecycle, to ensure our procurements properly reflect need and opportunity, and take account of the wider context, including the council's plans and strategies, locality working and collaboration with others.

We will develop the procurement **skills and capacity** of our people, to ensure we deliver a world class service.

Summary of Contract Procedure Rules

There are 29 sections to Contracts Procedure Rules, and a list of definitions. The following paragraphs highlight the key features of each section:

- 1** Compliance – the requirement for council staff to comply with Contracts Procedure Rules when the council is going to enter into a contract with a third party for the provision of goods, works or services.
- 2** Responsibilities of Directors and Chief Officers – particularly to have a plan for the relevant area of expenditure and to ensure that contracts are managed.
- 3** Responsibilities of Authorised Officers – including to ensure that budget is available, to use suitably skilled and experienced staff, to consult elected members and other stakeholders, to offer work to internal providers first, to plan the procurement, and to consider the wider social, environmental and economic impacts of the contract.
- 4** Responsibilities of Chief Procurement Officer – particularly to publish a register of contracts and a calendar of future procurements, and to provide support and advice.
- 5** Joint Procurement – rules to take account of joint procurement with other local authorities, for example within the city region, and other public bodies, for example health.
- 6** Estimating the Contract Value – to ensure the full cost of the contract is properly estimated before the procurement starts.
- 7** Below £10k - Low Value Procurement – a very light touch process for low value contracts.
- 8** Between £10k and £100k - Intermediate Value Procurement – an approach which recommends a competitive tender is undertaken but which allows Chief Officers to consider other approaches if these offer better value for money.
- 9** Over 100k - High Value Procurements – an approach which recommends a competitive tender is undertaken but which allows Chief Officers to consider other approaches if these offer better value for money.
- 10** Contracts that are subject to the Public Contracts Regulations – for contracts that are above the relevant thresholds a requirement to comply with the Public Procurement Regulations in full.
- 11** Pre-qualification – the process for selecting a shortlist of organisations to be invited to tender for high value procurements including a link to a good practice template.
- 12** The Invitation to Tender – the process for inviting tenders, including links to and the use of standard contract terms and conditions and other good practice templates.
- 13** Pre-Tender Submission Clarification – the process for tenderers to ask questions of the council and for the council to issue answers and updates to the tender documents before tenders are submitted.

- 14** Submission, Receipt, Opening and Registration of Tenders – the process for receiving tender submissions, including a preference for electronic submission.
- 15** Tender Evaluation – the process for evaluating tenders including a link to a good practice toolkit on setting evaluation criteria and weightings.
- 16** Errors in Tender Submissions – what can be done if errors are found.
- 17** Post Tender Clarification and Negotiation – the circumstances and processes for seeking clarification and negotiation on submitted tenders.
- 18** Awarding Contracts – the process for awarding the contract to the successful tenderer.
- 19** Debriefing and publishing – a requirement to tell all tenderers the outcome of the tender exercise and to publish details of the contract on a new publicly accessible contracts register.
- 20** Contract Management – a requirement to manage the contract once it has been awarded.
- 21** Contract Extension and Variations – the process for extending and varying contracts, including a requirement to take a formal decision.
- 22** Termination of Contract – the process for terminating a contract including a requirement to involve the PPPU/PU.
- 23** Nominated and Named Sub-Contractors – the process for including specific organisations on a tender list.
- 24** Consultants – a requirement not to employ staff through a consultancy contract, and confirmation that consultants cannot make procurement decisions on behalf of the council.
- 25** Emergencies – an ability to respond to emergencies that require urgent action which may mean that some elements of Contracts Procedure Rules cannot be complied with at the time.
- 26** Record and Document Retention and Control – requirements to record and retain certain documents relating to the procurement.
- 27** Waiver of Contracts' Procedure Rules – the circumstances and processes for deciding not to follow specified Contracts Procedure Rules.
- 28** Contract Disputes and Claims – the processes for pursuing or responding to contract disputes and claims.
- 29** Contract Exit – a requirement to plan and manage the end of the contract and a link to a good practice template.

Definitions